

1997 CONVENTION CENTER MANAGEMENT AGREEMENT

THIS 1997 CONVENTION CENTER MANAGEMENT AGREEMENT, hereinafter called the "1997 Agreement," is made and entered into this ____ day of _____, 1997, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," and THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City."

RECITALS

WHEREAS, on June 12, 1985, the District and the City entered into that certain Agreement (the "Original Agreement") under which the District and the City agreed to the terms and conditions for the City's management, operation, maintenance and promotion of a convention center to be constructed on District lands by the District, and the District's operation of certain parking facilities to be constructed by the District in connection with said convention center (City Document No. 00-18425); and

WHEREAS, there have been four amendments to the Original Agreement dated February 4, 1986 (City Document No. RR-265030), May 8, 1989 (City Document No. RR-273436), August 5, 1991 (City Document No. RR-278485), and November 23, 1992 (City Document No. RR-281150) and three Operating Memoranda entered into pursuant to paragraph 37 of the Original Agreement, dated, respectively, (1) August 10, 1989; (2) December 28, 1990; and (3) February 1, 1991 (all of which, together with the Original Agreement, are hereinafter referred to as the "1985 Agreement"); and

WHEREAS, by a Memorandum of Understanding ("MOU") dated June 21, 1994 (City Document No. 284126), the District and the City have agreed to jointly cooperate in creating a joint powers agency for the financing and construction of an expansion to the existing convention center (the "Expansion Project") which MOU is superseded by this 1997 Agreement; and

WHEREAS, in March of 1996 the City and the District approved a series of financing documents and other Agreements, including the First Amended and Restated Convention Center Management Agreement (the "1996 Agreement"), a Support Agreement and two Purchase Option and Lease Agreements (as hereinafter defined), to finance the Expansion project through the issuance of lease revenue bonds; and

WHEREAS, a lawsuit challenging the financing mechanism was filed in May of 1996, and is still pending before the California Supreme Court, having delayed the Expansion Project for nearly eighteen (18) months; and

WHEREAS, the City and the District still wish to proceed expeditiously to commence and complete the Expansion Project; and

WHEREAS, concurrently with the execution and delivery of this 1997 Agreement, the City and the District are entering into a lease (the "Facility Lease"), whereby the City will lease from the District the existing convention center, the expansion site, and the expansion project for a period of four years; and whereby the City will thereafter lease only the expansion site and the expansion project thereon; and

WHEREAS, the 1985 Agreement and the 1996 Agreement require revision and amendment to further provide for continued management, operation, maintenance and promotion of the existing convention center, the convention center expansion, the parking facility, and tennis courts in accordance with the general concepts set forth in the MOU; and

WHEREAS, the parties intend this 1997 Agreement to govern the maintenance, use, and operation of the existing convention center and the convention center expansion;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and in the MOU, the Facility Lease, and the Support Agreement and the Purchase Option and Lease Agreements entered into in 1996, the parties hereby agree as follows:

SECTION 1 Definitions. Unless the context otherwise requires, the terms defined in this section shall have the meanings specified herein. Capitalized undefined terms used herein shall, unless the context requires otherwise, have the meanings ascribed thereto in the Facility Lease.

Center

"Center" means all portions of the Existing Center and the Expanded Center that are open and operating at the relevant time.

Closing Date

"Closing Date" means _____, 1998.

Existing Center

"Existing Center" means the real property described in Exhibit A attached hereto and the improvements thereon, excluding the Parking Facility and Tennis Courts.

Existing Center Expiry Date

"Existing Center Expiry Date" means the date which is four (4) years from the Closing Date, unless terminated on an earlier date pursuant to the Facility Lease and Existing Center Lease.

Expanded Center

"Expanded Center" means the Expansion Site and the Expansion Project constructed thereon.

Expansion Project

"Expansion Project" means the expansion to the Existing Center to be constructed on the Expansion Site.

Expansion Project Expiry Date

"Expansion Project Expiry Date" means _____, 20__, except as extended or sooner terminated pursuant to the Facility Lease and the Expansion Lease.

Expansion Site

"Expansion Site" means the real property described in Exhibit B attached hereto.

Facility Lease

"Facility Lease" means that lease by and between the District and the City under which the District leases to the City the Existing Center and the Expanded Center, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Financing Documents

"Financing Documents" means the Support Agreement, the Facility Lease, the Purchase Option and Lease Agreement (Hotel Project), and the Purchase Option and Lease Agreement (Convention Center Project).

Fixtures, Furnishings and Equipment or FFE

"Fixtures, Furnishings and Equipment" or "FFE" means the fixtures, furnishings, and equipment purchased and installed in the Center.

Parking Facility

"Parking Facility" means the parking facility constructed adjacent to and below the Existing Center more particularly described in Exhibit C hereto.

Parking Facility Operator

"Parking Facility Operator" means the District or its designated manager/operator of the Parking Facility.

Purchase Option and Lease Agreement (Hotel Project)

"Purchase Option and Lease Agreement (Hotel Project)" means that agreement by and between the City and the District relating to potential District purchase/advances to the City in connection with the Expansion Project, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Purchase Option and Lease Agreement (Convention Center Project)

"Purchase Option and Lease Agreement (Convention Center Project)" means that agreement by and between the City and the District relating to potential District purchase/advances to the City for rent stabilization of the Expansion Project, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Purchase Option and Lease Agreements

"Purchase Option and Lease Agreements" means the Purchase Option and Lease Agreement (Hotel Project) and the Purchase Option and Lease Agreement (Convention Center Project), as originally executed and as they may from time to time be amended or supplemented in accordance with the terms thereof.

Support Agreement

"Support Agreement" means the Support Agreement by and between the City and the District under which the District agrees to make annual payments to the City to assist the City to finance the Expansion Project and to meet the City's obligations under the Facility Lease, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Tennis Courts

"Tennis Courts" means those tennis courts constructed on the roof of the Existing Center pursuant to the 1985 Agreement.

SECTION 2 Center and Parking Facility.

- (a) Name. The name of the Center shall be "The San Diego Convention Center".
- (b) Design and Construction of the Expansion Project. The City shall assume all responsibility for planning, permitting, designing, constructing and equipping the Expansion Project. The District shall have the right to approve all design and construction documents; however, the right to approve shall be reasonable and made in a timely manner.
- (c) Funding. The District shall have no obligation to provide additional funding for the design or construction of the Expansion Project.

SECTION 3 Term. The term of this 1997 Agreement shall commence on the Closing Date and shall expire concurrently with the Expansion Lease. Until the Closing Date, the 1985 Agreement shall govern. Upon the Closing Date, this 1997 Agreement shall govern the management, operation and maintenance of the Existing Center, and shall supersede the 1985 Agreement. Upon the City taking possession of the Expansion Project, the terms of this 1997 Agreement shall apply to the management, operation and maintenance of the Center.

SECTION 4 Management Services.

- (a) Method of Operation. At its sole expense, the City shall, itself directly or through San Diego Convention Center Corporation, Inc., a California nonprofit public service corporation (the "Corporation"), the directors of which are appointed by the City Council, supervise, direct and control the management, operation, maintenance and promotion of the Center and shall render or supervise and control the performance of all services and do or cause to be done all things reasonably necessary for the efficient and proper operation of the Center. The Corporation may exercise any right and discharge any obligation of the City set forth in this 1997 Agreement.
- (b) Hotel Occupancy. The City shall use its best efforts to continuously use, manage, operate, maintain and promote the Center effectively in such a manner as to (i) enhance the occupancy of hotels through the attraction of major conventions and trade shows, and (ii) other uses, subject to the provisions of Paragraph 6(a)(4) of this 1997 Agreement. The Center shall not be used for the San Diego Symphony summer series.
- (c) Rental, Hiring Rates. Rental or hiring rates charged by the City for any use of the Center (or any part thereof) to any sponsor, exhibitor, promoter or the like shall be competitive with those of comparable convention centers, and shall be such as to promote the objectives set forth in Paragraphs 4(a) and 4(b). The price for any use of the Center shall not be less than a reasonable estimate of approximate operating costs of the Center for and during such use, except that the City may allow lower cost or free use of the Center for conventions and trade shows if such lower cost or free use of the Center is consistent with the objectives set forth in Paragraphs 4(a) and 4(b), above. Admission charges to Conventioneers for use of the Center

accommodations and services shall be fair and reasonable, taking into account, among other factors, said operating costs.

(d) Center Income, Expenses. Except as provided in Paragraph 6(a)(4), the City shall receive all income from the operation of the Center. The City shall promptly and fully pay and discharge all expense of using, managing, operating, maintaining and promoting the Center. If said expenses exceed said income, the City shall solely bear the loss, and the District shall not be obligated to provide funds to cover any operating deficits. Nothing contained in this paragraph shall be construed to prohibit the City from contesting in good faith the validity of any claim by any person for payment of any of such expenses.

SECTION 5 Parking Facility and Tennis Courts.

(a) Initial Allotment. The District shall continue to provide an allotment of eleven hundred (1,100) parking spaces for use by Conventioneers ("Convention Spaces"); provided, however, that when any of said Convention Spaces are not needed by Conventioneers for a period of time, said spaces can be utilized by others in the reasonable discretion of the Parking Facility Operator; and also provided that when parking spaces allotted by the District to other users of the Parking Facility are (1) needed by the Center, and (2) not in use by the other users, such parking spaces may be used as Convention Spaces, upon the giving of timely notice by the City or its agent to the other users whose spaces are being occupied. The City shall obtain the permission of the other users of such spaces.

(b) Change in Allotment. These parties shall periodically confer and cooperate continually for the purpose of exchanging information about bookings and other events that will generate parking demands, and to adjust the allotment of Convention Spaces on a temporary ad-hoc basis either upwards or downwards, as the respective parking demands of Conventioneers may then indicate. In the event of a dispute as to the number of Convention Spaces, which these parties cannot resolve, the dispute shall be resolved by an independent parking expert whose decision shall be final; provided, however, if the decision as to the number of parking spaces is decided by said expert, the allotment shall not be more than twelve hundred (1,200) parking spaces. Said expert shall be selected by mutual agreement of these parties or, if they cannot agree, then by the Presiding Judge of the San Diego Superior Court in his or her individual capacity.

(c) Parking Rates. The District shall base parking rates for Convention Spaces on periodic (at request of either party) surveys of comparable Centre City parking rates. The District further agrees to advise and consult with the City at least sixty (60) days in advance of any parking rate adjustments.

(d) Administration Parking Spaces. In addition to the allotment of parking spaces described in Paragraph 5(a), the Parking Facility Operator shall provide, without charge to the City or users, an allotment of 80 parking spaces for only such administrative, security, emergency and promotional uses as the City shall determine. Said parking spaces shall be located on the top

floor of the Parking Facility and be convenient to Center offices. Any change in the number of spaces to be allotted pursuant to this Paragraph 5(d) shall be determined from time to time by the City Manager of the City (the "City Manager") and the Port Director of the District (the "Port Director") based upon demonstrable need.

(e) Parking Facility Operator Contract Specifications. If the District determines in its sole discretion to contract for operation of the Parking Facilities, prior to a final determination of the specifications for a contract to operate the Parking Facility, the District shall propose to the City specifications for such contract. The City shall have the right to approve said proposed specifications; such right shall be exercised in the following manner: the District shall deliver the proposed specifications to the City and the City, within fifteen (15) working days after its receipt of said proposed specifications, shall notify the District in writing that (i) the City approves said specifications, or (ii) the City proposes specific changes in said proposed specifications, which changes shall be described in detail in said written notification. If the City does not deliver said written notification within said fifteen (15) working day period, it shall be deemed that the City approves said proposed specifications. If said written notification is given pursuant to clause (ii) above, and contains proposed changes, the District, within ten (10) working days after its receipt of said written notification, shall notify the City in writing that the District (i) approves said proposed changes or (ii) disputes said proposed changes. The question of disputed proposed changes will be promptly brought before the Board and the decision of the Board as to said disputed proposed changes shall be binding upon the parties.

(f) Parking Facility Operation by District. If the District determines in its sole discretion to operate and manage the Parking Facility directly, it will establish a policy with respect to said management and operation similar to the specifications called for in Paragraph 5(e) above which shall then be referred to the City in the same manner as called for in Paragraph 5(e) and dealt with by these parties in the same manner as called for in Paragraph 5(e).

(g) The Tennis Courts. During the term of this 1997 Agreement, the District and/or its designees and their guests shall have free and unencumbered access to and from the Tennis Courts at all hours, seven (7) days a week.

(h) Income, Expenses. The District shall receive all income from the operation of the Parking Facility and the Tennis Courts. The District shall promptly and fully pay and discharge all expense of using, managing, operating, maintaining and promoting the Parking Facility and the Tennis Courts. If said expenses exceed said income, the District shall solely bear the loss. The District may assign to its designee(s) the right to income from, and obligation for expenses of, the Tennis Courts.

SECTION 6 Consideration.

(a) Consideration to the District. In consideration for the District's investment in the designing, constructing, furnishing and equipping of the Center and the managing, operating and maintaining of the Parking Facility, the District shall receive the following benefits:

(1) Cash Payment. As initial consideration, the City paid the District the sum of Twenty Dollars (\$20) within the tenth day following the effective date of the 1985 Agreement, representing a calculation of One Dollar (\$1) per year.

(2) Operation. The City shall operate and maintain the Center pursuant to this 1997 Agreement.

(3) Parking Facility Income. The District shall receive all income from, and bear all expenses of, the operation and maintenance of the Parking Facility pursuant to this 1997 Agreement.

(4) Non-convention and Non-trade Show Income. In consideration of the City's ability to rent or hire the Expanded Center for non-convention and non-trade show uses which could otherwise have utilized hotels on District lands, the City shall pay to the District commencing with the opening of the Expanded Center, and ending November 30, 2006: (i) three percent (3%) of gross food and nonalcoholic beverage sales, (ii) five percent (5%) of gross alcoholic beverage sales, and (iii) six percent (6%) of gross rental income of the conference and banquet rooms for such non-convention and non-trade show uses in the Expanded Center. Beginning on December 1, 2006, percentages payable under this Paragraph 6(a)(4) shall be equal to the average percentage rents for such goods and services for all hotels on District lands within a one-half mile radius.

(5) Rentals. The District shall receive increased percentage rentals from its nearby tidelands properties as a result of persons using the facilities located on said nearby tidelands properties.

(6) Title to Expansion Project. Upon termination of the Facility Lease, title to the Expanded Center and any additions, improvements, or alterations constructed thereon shall vest in the District at no additional cost to the District, subject to the provisions of Paragraph 11(b) of this 1997 Agreement.

(7) The Dewatering Facility. Once the dewatering facility is in compliance with all regulatory requirements, including an NPDES permit, the City shall assume operation of the dewatering system constructed in connection with the Existing Center, including status as exclusive holder of the NPDES permit on the dewatering system, including all rights and obligations connected therewith for so long as the City is the Operator of the Center pursuant to this 1997 Agreement. The City's obligations are subject to the provisions of a separate Memorandum of Understanding (the "Dewatering MOU") between the District and the City, which is attached to this 1997 Agreement as Exhibit "D", and is incorporated herein and made a part hereof by this reference. In addition, and as more fully set forth in the Dewatering MOU, if the Expansion Project causes a violation of an NPDES permit, the City and the District agree to each pay fifty percent (50%) of the costs associated with bringing the dewatering system back into compliance with the permit.

Upon the expiration of this 1997 Agreement, or termination of the City as the Operator under this 1997 Agreement, the District or the District's designee shall become the holder of the NPDES permit, unless the City and the District have agreed in writing to the assignment of this 1997 Agreement and NPDES permit to a third party.

(b) Consideration to the City. In consideration for the City's managing, operating, maintaining and promoting the Center, the City shall receive the following benefits:

(1) Support Agreement. The District shall pay to the City the sums set forth in the Support Agreement for the term set forth therein.

(2) Center Income. Except as set forth herein, the City shall receive all income from, and bear all expenses of, the Center pursuant to this 1997 Agreement.

(3) Transient Occupancy Taxes. The City shall receive all transient occupancy taxes resulting from persons staying at tideland hotels located near the Center, as well as other hotels in the City of San Diego.

(4) Sales Taxes. The City shall receive sales taxes resulting from purchases made within the City of San Diego by Conventioneers.

(5) Property Taxes. The City shall receive property taxes resulting from hotel developments expected to occur within its jurisdiction.

(6) Operation of Parking Facility. The District shall operate and maintain the Parking Facility pursuant to this 1997 Agreement.

(7) Purchase Option and Lease Agreements. The City shall receive the benefit of funds derived from the District's purchase of the City assets under these agreements to assist the City to meet its rental obligations under the Facility Lease.

SECTION 7 Annual Reports, Meetings.

(a) Annual Reports. For the purposes of this 1997 Agreement each fiscal year shall be the same as the City's fiscal year. Within two hundred seventy (270) calendar days after the end of each fiscal year, the City shall furnish the District with (i) a statement of current assets and current liabilities shown on the City's books of account of the Center, as of the end of such fiscal year, (ii) an income and expense statement and statement of cash flows showing the results of operating the Center for such fiscal year, (iii) a narrative report describing conventions and events held in the Center during such fiscal year and the estimated number of persons attending such conventions and events and (iv) a narrative report describing conventions and events expected to be held in the Center during the current fiscal year. The reports described in clauses (i) and (ii) above shall be prepared pursuant to generally acceptable accounting principles consistently applied.

(b) Meetings. Within thirty (30) calendar days after the City furnishes the District with the annual reports described above, the Port Director and the City Manager shall meet and confer on (i) said annual reports, (ii) the parking allotment (pursuant to Paragraph 5(b) of this 1997 Agreement) and (iii) any other matter raised by either party.

SECTION 8 Maintenance and Custodial Services.

(a) Obligations of the District. Throughout the term of this 1997 Agreement, the District shall, at its sole expense, clean, paint, maintain and provide custodial services for (i) the Parking Facility and (ii) the Tennis Courts, except that the routine maintenance and minor repairs (as defined in Paragraph 8(b), below) for the Parking Facility Building Equipment listed in Paragraph 8(d), below, shall be the responsibility of the City, and the District shall reimburse the City in the amount of \$3,364.00 per month to perform such routine maintenance and minor repairs for those items listed in said Paragraph 8(d), below. The foregoing reimbursement amount and the \$250 threshold amount in Sections 8 or 9 hereof may be adjusted from time to time by mutual agreement of the parties.

(b) Obligations of the City. Throughout the term of this 1997 Agreement, the City shall, at its sole expense, clean, paint, maintain and provide custodial services for (i) the Center and (ii) the FFE and all additions to, and replacements of, the FFE. Additionally, the City shall perform all repairs and manufacturer recommended routine maintenance for the Parking Facility Building Equipment listed in Paragraph 8(d), below. Not included within the City's obligations under this Paragraph 8(b) are the Tennis Courts and facilities for which the District has the obligations for maintenance, custodial and repair services.

(c) Standard. All maintenance and custodial services undertaken pursuant to this Section 8 shall be done in such a manner as to keep the Center, the FFE (and additions to, and replacements of, the FFE), the Parking Facility and the Tennis Courts in a good, safe, healthy and sanitary condition in compliance with all applicable laws.

(d) Parking Facility Building Equipment shall be defined as the following:

- (1) Air handling unit #31 (serves parking garage offices),
- (2) All air exhaust and supply fans serving the parking levels,
- (3) The parking garage carbon monoxide monitoring systems;
- (4) The Center and Parking Facility dewatering system; and
- (5) Elevators A, C and F.

SECTION 9 Repair and Replacement.

(a) Obligations of the District. Throughout the term of this 1997 Agreement, the District shall, at its sole expense, promptly repair and, if necessary, promptly replace any work of construction, part, fixture, portion, or system in the (i) Existing Center which is found to be defective or inoperative if said work of construction, part, fixture, portion, system or FFE was not installed in compliance with the working drawings and specifications and the change orders on the Existing Center or if such defect or inoperation is caused by the neglect or willful misconduct of the District, the Parking Facility Operator or the employees, agents or contractors of either and (ii) the FFE in the Parking Facility; excluding, however, repair and replacement of the Parking Facility Building Equipment listed in Paragraph 8(d), above, which shall be the responsibility of the City as set forth in Paragraph 9(d), below. Not included within the District's obligation under this Paragraph 9(a) is any repair or replacement caused by the neglect or willful misconduct of the City, its contractors, its subcontractors, its agents or employees, or Conventioneers (which repair and maintenance shall be the responsibility of the City).

(b) Obligations of the City. Throughout the term of this 1997 Agreement, the City shall, at its sole expense (either by direct payment to contractors or others, or by reimbursement to the District), promptly repair and, if necessary, promptly replace, the Parking Facility Building Equipment listed in Paragraph 8(d), above and any work of construction, part, fixture, portion, system, or FFE in the Expanded Center which is found to be defective or inoperative if said work of construction, part, fixture, portion, system or FFE was not installed in compliance with the working drawings and specifications and the change orders on the Expanded Center or if such defect or inoperation is caused by the neglect or willful misconduct of the City or the employees, agents or contractors of the City. Not included within the City's obligation under this Paragraph 9(b) are the areas and facilities for which the District has, pursuant to Paragraph 9(a) above, obligations for repair and replacement. To the extent permitted by warranties and/or service contracts obtained by the District in connection with machinery (and other wares and materials) installed in the Center, the City shall be entitled to utilize all monetary and other benefits of said warranties and/or service contracts in fulfilling the City's obligations under this Paragraph 9(b).

(c) Standard. All repair and replacement undertaken pursuant to this Section 9 shall be done in such a manner as to keep the Center, the Parking Facility and the Tennis Courts in a good, safe, healthy and sanitary condition in compliance with all applicable laws.

(d) Repair and Replacement of Parking Facility Building Equipment.

(1) Repair. After the City has assumed operation of the dewatering system pursuant to paragraph 6(a)(7), above, the City shall bear the cost of repair or replacement of the dewatering system. If any other item of equipment listed in Paragraph 8(d), above, requires repairs, which include replacement of any part having a supplier's invoice price exceeding \$250, City will promptly and correctly complete the repair. After the repair has been satisfactorily completed, the City will submit an invoice, including all materials and labor expenses incurred, to the District for approval, which approval shall be timely and not unreasonably withheld. If the

District approves the invoice, the District will reimburse the City for the expenses specified in the invoice. If the District does not approve the invoice, the District shall promptly return the invoice to the City together with an explanation specifying the reasons the invoice was not approved. If the City agrees with the District's specified reasons for disapproval, the City shall then attempt to correct the invoice and resubmit it to the District. If the District does not approve the resubmitted invoice, or if the City does not agree with the District's reasons for disapproval, the expenses for such repair shall be a controversy determined by arbitration in accordance with Paragraph 9(e), below.

(2) Replacement. After the City has assumed operation of the dewatering system pursuant to paragraph 6(a)(7), above, the City shall bear the cost of replacement of the entire dewatering system if it determines that the entire system has become unreliable and should be replaced. As to any other piece of equipment listed in section 8, above, if the City determines that an entire piece, or a major component thereof, has become unreliable and should be replaced, the City will submit to the District a costs proposal for replacement of the equipment or component, which shall include all material and labor expenses necessary to promptly complete the replacement. The proposal shall also include an operating history for the equipment or component, or such other information that demonstrates its unreliability. (In order to qualify as a major piece of equipment or component, the entire piece of equipment or component to be replaced shall have a supplier's invoice price exceeding \$250. After approval of the proposal by the District, which approval shall not be unreasonably withheld, the City will promptly replace the equipment or component. Once the equipment or component has been replaced and is operational, the District will reimburse the City for the expenses specified in the approved proposal. If the proposal is not approved, and the District and City cannot agree on either a proposed replacement or an amount of reimbursement, the controversy shall be determined in accordance with Paragraph 9(e), below.

(e) Arbitration. In the event the City and the District cannot agree on the expenses for repair, pursuant to Paragraph 9(d)(1), above, or the need for or expenses of replacement, pursuant to Paragraph 9(d)(2), above, the controversy shall be determined by three (3) arbitrators, in the following manner:

(1) The party seeking arbitration shall promptly give notice of such application to the other party. After service of this notice by either party to the other, one arbitrator shall be appointed by each party, and notice of such appointment shall be given by each party to the other as soon as appointment is made.

(2) The two selected arbitrators shall then agree on a third arbitrator. If they fail to select an arbitrator, the third arbitrator shall be promptly appointed by the Presiding Judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity.

(3) All of the arbitrators shall be qualified. Each party shall bear the expense of its own appointed arbitrator and shall bear other expenses pursuant to Section 1284.2 of the California Code of Civil Procedure.

(4) Hearings shall be held in the City of San Diego, California. The arbitration shall be conducted under and subject to Sections 1280 through 1294.2 of the California Code of Civil Procedure.

(5) The award shall be the decision of not less than two of the arbitrators. The award shall be in writing in the form of a report that is in accordance with the powers of the arbitrators set forth herein, supported by facts and analysis, and in accordance with law. The arbitrators shall make copies of their report available to any ethical practice committee of any recognized professional construction or maintenance organization.

SECTION 10 Improvements, Alterations.

(a) The City may, at its own expense, construct and install any additions, improvements or alterations to or in the Center necessary or desirable for the use of the Center, except that alterations which cost more than \$150,000, or which alter the Center exterior, or which affect its structural integrity, shall be subject to the District's approval. Any additions, improvements or alterations constructed and installed by the City shall be owned by the District. Additions to the FFE are not "additions, improvements or alterations" within the meaning of this Section 10, or Paragraph 6(a)(7) of this 1997 Agreement.

SECTION 11 Title to Improvements.

(a) Title to Additions, etc., to Land. The Existing Center, the Parking Facility, and the Tennis Courts (and all other improvements constituting fixtures to land) hereinafter in or on the Existing Center site shall belong to the District. Title to the Expanded Center shall vest in the District pursuant to Section 6(a)(6) of this 1997 Agreement. Upon the expiration or sooner termination of this 1997 Agreement, all additions, improvements, or alterations of any kind constructed or installed in the Center by the City shall (i) remain in the Center, (ii) be free of any lien in favor of any vendor or other person, and (iii) belong to the District without any claims thereto by the City.

(b) Title to the FFE, Additions, Replacements. Until the expiration or sooner termination of this 1997 Agreement, the FFE (and all additions to, or replacements of, the FFE) shall belong to the City. Upon the expiration or sooner termination of this 1997 Agreement, the FFE (and all replacements of the FFE) shall (i) remain in the Center, (ii) be free of any lien in favor of any vendor or other person, and (iii) belong to the District without any claims thereto by the City. The City may, at its sole expense and within 30 days after the expiration or sooner termination of this 1997 Agreement, remove any additions to (as distinguished from replacements of) the FFE and thereby retain ownership of such removed additions to the FFE, provided that the City, within 30 days thereafter, repairs at its sole expense any damage caused to the Center by such removal. Any FFE additions not removed by the City shall be deemed abandoned by the City and shall thereafter belong to the District without any claims thereto by the City.

SECTION 12 Insurance.

Notwithstanding insurance required under the Facility Lease, the parties shall procure and maintain throughout the term hereof for the Existing Center, the Parking Facility, and the Expanded Center, insurance against the following risks in the following respective amounts:

(a) City Liability Insurance. Throughout the term of this 1997 Agreement, the City shall procure and maintain in effect general liability insurance covering any and all liability of the District, the City, and their respective officers, employees, and agents, if any, with respect to or arising out of the ownership, maintenance, use or occupancy of, (1) the Center, and (2) the Parking Facility Building Equipment listed in Paragraph 8(d), and all operations incidental thereto, including but not limited to structural alterations, new construction and demolitions, and including coverage for those hazards generally known in the insurance industry as explosion, collapse and underground property damage (commonly referred to as "XCU Insurance"). Said insurance shall name the Trustee, the District, the City and their respective officers, employees, and agents as Additional Insureds, and shall have a limit of not less than \$50,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage suffered by any person. Said insurance may provide for a deduction from coverage, which deductible shall not be more than \$200,000. Said limits and/or deductible may be adjusted from time to time by a memorandum described in Section 36 of this 1997 Agreement. Said insurance may be evidenced by a policy or policies covering only the Center or by endorsement to bring the same within a blanket policy or policies held by the City covering other properties in which the City has an interest provided the policy or policies have a location aggregate provision.

(b) District Liability Insurance. Throughout the term of this 1997 Agreement, the District shall procure and maintain in effect general liability insurance covering any and all liability of the District, the City, and their respective officers, employees, and agents, if any, with respect to or arising out of the ownership, maintenance, use or occupancy of the Parking Facility and Tennis Courts, and all operations incidental thereto, including but not limited to structural alterations, new construction and demolitions, and including coverage for those hazards generally known in the insurance industry as explosion, collapse and underground property damage (commonly referred to as "XCU Insurance"). Said insurance shall name the Trustee, the District, the City and their respective officers, employees, and agents as Additional Insureds, and shall have a limit of not less than \$50,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage suffered by any person. Said insurance may provide for a deduction from coverage, which deductible shall not be more than \$200,000. Said limits and/or deductible may be adjusted from time to time by a memorandum described in Section 36 of this 1997 Agreement. Said insurance may be evidenced by a policy or policies covering only the Parking Facility and Tennis Courts or by endorsement to bring the same within a blanket policy or policies held by the District covering other properties in which the District has an interest, provided the policy or policies have a location aggregate provision.

(c) Property Insurance. Throughout the term of this 1997 Agreement, the parties shall jointly procure and pay premiums for, based on the formula set forth in Paragraph 12(d),

fire insurance on buildings, fixtures and improvements on the Center, the Parking Facility, and the Expanded Center (including foundations, footings and similar structures below grade) against any peril generally associated within the classification of "all risk," including flood and earthquake, in amounts at least equal to the full replacement cost thereof (without deduction for depreciation) and naming the District as sole insured and naming the District and Trustee as joint loss payees. Said fire insurance shall include (i) boiler and machinery insurance on all boilers, air-conditioning equipment, and other pressure vessels and systems located in, on or about the Center and Parking Facility and (ii) coverage for debris removal, increased cost of construction and demolition costs up to the limits of the policy. Notwithstanding the foregoing, the limit with respect to earthquake and flood damage may be less than the full replacement cost if the District so authorizes. Said fire insurance shall be written in such a manner that, in the event of loss, the amount of coverage afforded the insured shall not be reduced or diminished by reason of the application of any co-insurance or average clause.

The limit of the fire insurance described in this Paragraph 12(c) and the deduction from coverage thereon shall be reviewed annually by the Port Director, who shall determine a limit and deductible which accurately represents the then current full replacement cost of buildings, fixtures and improvements on the Center and Parking Facility. Said full replacement cost, as so determined, shall be and become the limit (except as to earthquake and flood coverage) of the fire insurance until the next such determination.

(d) Premiums Reimbursement. Promptly after the payment of each premium for the policies of insurance described in Paragraph 12(c), above, the City shall notify the District in writing of the amounts of such premium. Within 10 days after the delivery of such notice, the District shall reimburse the City for a portion of said premiums, in an amount equal to 17% of such premiums.

(e) Property Insurance, the FFE. Throughout the term of this 1997 Agreement, the City shall procure and pay the premiums on the FFE (and additions to, and replacements of, the FFE). Said insurance shall include coverage against fire, vandalism, malicious mischief, theft, water damage, and any peril generally included within the classification of "the special term" and shall name the City as sole insured. The limit of said insurance shall be the full replacement cost of the FFE (and additions to, and replacements of, the FFE) as determined annually by the City.

(f) Cancellation, Rating, Etc.. All insurance policies required hereunder shall (i) provide that coverage shall not be canceled or reduced in coverage or amount until at least 30 days' written notice of such cancellation or reduction shall have been given to the Trustee, the City and the District, (ii) be written or endorsed as to make losses, if any, payable to the Trustee, and (iii) be issued by insurance companies which are qualified to do business in the State of California and which have a then current rating of A-:Class IX or better in Best's Key Rating Guide or issued by an insurer on California's list of eligible surplus lines insurers (LESLI List). If, as to any policy of property insurance covering the Center and Parking Facility, only one original policy is issued, the District shall receive and retain the same.

(g) Certificates of Insurance. A certificate of any insurance policy procured pursuant to this Section shall be delivered to the District within 30 days after the effective date of such policy.

SECTION 13 Damage from Fire or Other Peril.

In the event the Center, the Parking Facility, the Tennis Courts, the FFE (or additions to, or replacements of, the FFE) or any other improvements in or on the Center are damaged (each of which is hereinafter called "Damaged Improvements") by a peril covered by a policy of insurance described in Section 12 of this 1997 Agreement (an "Insured Peril"), the City and the District will cause the Net Proceeds to be directly transferred to the Trustee for deposit in the Insurance Proceeds and Condemnation Awards Fund established pursuant to Section 5.03 of the Trust Agreement and applied as follows:

(a) Insured Peril; Proceeds Exceeding Costs. Within 120 days of the date of said damage or uninsured peril, the City shall obtain a written estimate(s) of the (i) cost of repairing, replacing, and reconstructing the Damaged Improvements (collectively hereinafter the "Reconstruction"), and (ii) property insurance proceeds available to pay such costs. Copies of such estimate(s) shall be made available to the District at the District's request. If the 120 day period is insufficient to obtain said estimates, the period shall be reasonably extended by the City Manager. If the Net Proceeds exceed the estimated costs of Reconstruction, the Damaged Improvements shall be repaired, replaced and reconstructed to the same or better quality as existed before the damage occurred. The City shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage. The obligation for the Reconstruction and the accomplishment thereof shall be subject to the provisions of Paragraphs 13(e) through 13(f) below. Any balance of insurance proceeds remaining after the Reconstruction has been completed shall be divided between the parties in the same ratio in which they share the premiums for property insurance under Section 12 of this 1997 Agreement.

(b) Cost Exceeding Proceeds. If the estimated costs of Reconstruction exceed the Net Proceeds, the City, in its sole discretion, may elect to budget and appropriate the Reconstruction the amount of such excess, whether the same is greater or less than the estimated excess, and to manage the Reconstruction as set forth in Paragraphs 13(e) through 13(f), below. The City shall exercise this election by written notice thereof delivered to the District within 30 days after the City obtains said written estimate(s).

(c) Proceeds Sufficient to Redeem All Certificates. If the City does not exercise the option to reconstruct, the Net Proceeds shall be transferred to the Trustee with directions to apply the proceeds to the Redemption Account established under the Trust Agreement to redeem all Outstanding Certificates in the manner provided by Section 2.03(a) of the Trust Agreement. If the Net Proceeds exceed the amount necessary to redeem all Outstanding Certificates, District shall be entitled to the amount of proceeds remaining after redemption of all Outstanding Certificates ("Excess Proceeds") and shall have the option (i) to contribute the Excess Proceeds to the

Reconstruction and to manage the Reconstruction pursuant to Paragraph 13(c) below, or (ii) if required by law or if the District so elects, to demolish any remaining improvements on the Center site and remove all debris from the site.

(d) Proceeds Insufficient to Redeem All Certificates. If the City does not exercise its election to reconstruct and Net Proceeds are insufficient to redeem all Outstanding Certificates pursuant to Section 2.03(a) of the Trust Agreement the Net Proceeds shall be transferred to the Trustee with directions to apply the proceeds to the Redemption Account established under the Indenture to redeem partially the Outstanding Certificates in the manner provided by Section 2.03(a) of the Trust Agreement and City in its sole discretion, may elect to budget and appropriate funds to cause the redemption of the remaining Outstanding Certificates. If the City elects to budget or appropriate funds for the redemption of Certificates, the City shall transfer such funds to the Trustee for deposit in the Redemption Account established pursuant to the Trust Agreement.

(e) Management of the Reconstruction. If the Center, Parking Facility, Tennis Courts, or any part thereof becomes Damaged Improvements, the District or the City, whichever is entitled to manage the Reconstruction under Paragraphs 13(a) through 13(c) above, shall promptly cause, manage and supervise the Reconstruction. Nothing in this Section 13 shall be construed to preclude the parties from agreeing to issue a joint contract(s) for, or otherwise cooperating in, the Reconstruction of any of the improvements on the Center, Parking Facility or Tennis Courts. The provisions of Sections 15 and 20 shall apply to the Reconstruction.

(f) Covenant to Pay Promptly. The party entitled to manage the Reconstruction, pursuant to this Section 13 said party shall be entitled to be paid promptly from the property insurance proceeds (and the parties' deposits, if any) the amounts to which it is entitled for such Reconstruction.

SECTION 14 Eminent Domain.

(a) Eminent Domain. If prior to the termination of this 1997 Agreement, title to, or the temporary use of any interest in the Center or any portion thereof governed by Section 7.01 of the Facility Lease is taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority, the rights and obligations of the City and the District, including but not limited to distribution of proceeds, shall be determined in accordance with Section 7.01 of the Facility Lease. As to the condemnation of any interest in the Center not governed by the Facility Lease, if such condemnation impairs the use and operation of the Center, the City and the District will cause the net proceeds of any condemnation award to be applied to the prompt Restoration of the Center with any balance in proceeds remaining after Restoration being paid to the District and the City in proportion equal to the percentage of the District's or the City's interest that was subject to the eminent domain proceeding. In the event that the proceeds are insufficient to restore the Center, the District and the City, in its sole discretion, may agree to contribute additional funds to cause the Restoration of the Center.

SECTION 15 Liens. Except as created by or pursuant to the Financing Documents:

(a) Mutual Indemnity. Each party shall at all times save the other party free and harmless and indemnify the latter party against all claims for labor or materials in connection with the former party's obligations and rights under this 1997 Agreement and the costs of defending against such claims, including reasonable attorneys' fees.

(b) Liens. In the event any lien or levy of any kind is imposed on the Center (or any part thereof or interest therein) by a claimant against either party (which party is hereinafter called "the Liennee"), the Liennee shall obtain and post a bond of sufficient form and penal amount to lawfully preclude the loss of the Center (or any part thereof or interest therein) through enforcement by said claimant of such lien or levy. Such bond shall be executed and acknowledged by the Liennee as principal and by a corporation (licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company) as surety. Such bond shall be so obtained and posted no later than 20 days after delivery upon the Liennee of a written request from the other party to so do.

SECTION 16 Encumbrance. Except as created by or pursuant to the Financing Documents:

(a) Encumbrance. The City shall not encumber the Center, this 1997 Agreement or any improvements on the Center by a deed of trust, mortgage or other security instrument to secure the payment of an obligation of the City; provided, however, that the City may acquire additions to or replacements of the FFE by any valid lease-purchase or other arrangement; provided, however, that as to replacements the District has agreed, where required to do so, by a memorandum pursuant to Section 36 of this 1997 Agreement. The District shall not encumber the Center in a manner that would interfere with the City's right to maintain, use, and operate the Center.

SECTION 17 Assignment, Sublease.

(a) Subject to the provisions of Paragraph 4(a) of this 1997 Agreement, and the provisions in the Financing Documents, the City shall not, voluntarily or by operation of law, (i) assign or transfer the whole or any part of this 1997 Agreement or any interest therein, (ii) sublease the whole or any part of the Center, (iii) contract for the management or operation of the whole or any part of the Center, or (iv) permit the occupancy of any part thereof by any other person, without first obtaining the consent of the District, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the City may, without such consent, sublet, rent or hire out any portion of the Center for public or private conventions, trade shows, meetings, banquets, exhibitions, entertainment, performances or other events of different kinds, upon such terms and conditions as are consistent with the objectives set forth in Paragraphs 4(a) and 4(b), above, of this 1997 Agreement.

SECTION 18 Default, Termination.

(a) Default by the City. If any default be made by the City in the payment of the consideration herein provided or in the performance of any covenant herein, or if the City fails to fulfill in any manner the uses and purposes for which this 1997 Agreement is granted, and such default is not cured within (i) 10 days after delivery to the City of written notice thereof (if the default is in the performance of the use obligation provisions in Section 19 of this 1997 Agreement) or (ii) 30 days after delivery to the City of written notice thereof, if the default is in the payment of consideration, or (iii) 60 days after delivery to the City of written notice thereof, if the default is in the performance of any other covenant herein, then, in any such event, the District shall have all the rights and remedies to which it is or shall be entitled by law or equity including, but not limited to, the right to a mandatory injunction to enforce any of said obligations. Provided, however, that in no event shall the City's rights to lease, occupy, and use the Center under the Facility Lease be abrogated or abridged.

(b) Default by the District. If any default be made by the District in the performance of any covenant herein, and such default is not cured within (i) 10 days after delivery to the District of written notice thereof, if the default is in the performance of its obligations under Paragraphs 5(a) or 13(f) of this 1997 Agreement) or (ii) 60 days after delivery to the District of written notice thereof, if the default is in the performance of any other covenant herein, then, in any such event, the City shall have all the rights and remedies to which it is or shall be entitled by law or equity including, but not limited to, the right to a mandatory injunction to enforce any of said obligations.

SECTION 19 Use Obligation.

(a) Use Obligation. The City shall actively and continuously use and operate the Center for the purposes provided for in Sections 4 and 17 of this 1997 Agreement. Said active and continuous use and operation enhances the value of the tidelands, provides needed public service, provides additional employment, taxes, and other benefits to the general economy of the area.

SECTION 20 Performance Bond.

(a) Performance Bond. No improvement (including any repair or addition) costing more than \$1,000,000 shall be commenced upon the Center by the City until the City has secured and submitted to the District performance bond(s) in the amount of the total estimated construction cost of such improvement to be constructed by the City. Said sum may be from time to time adjusted by a memorandum pursuant to Section 36 of this 1997 Agreement. In lieu of said performance bond(s), the Port Director may, at his discretion, accept the performance and labor and material bonds supplied by the City's contractors or subcontractors, or a performance guaranty(ies), or other satisfactory evidence that said construction shall be timely completed in a

lien free manner. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to the District.

SECTION 21 Taxes and Utilities.

(a) Taxes. It is contemplated that this 1997 Agreement will not result in a taxable possessory interest or be subject to payment of any property taxes by the City. However, if any taxes are validly assessed and levied, the City shall pay before delinquency all taxes and assessments of any kind assessed or levied upon the City or its agents, or the Center, by reason of (i) this 1997 Agreement, (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained on the Center, or (iii) the business or other activities of the City upon or in connection with the Center.

(b) License Fees, Utilities. The City guarantees to the District that (i) any fees imposed by law for licenses or permits for any business or activities of the City in the Center shall be promptly paid and (ii) all charges for sanitary, sewer, gas, electricity, water, telephone, cable television and other utilities and communications facilities (all of which are collectively called the "Utility Services") supplied to the Center during the term of this 1997 Agreement shall be promptly paid.

(c) Joint Use. If any of the Utility Services are jointly supplied to the Center and to the Parking Facility and/or Tennis Courts, but are not separately metered, and the parties cannot agree on the share of the cost thereof attributable to the Center (and hence, to be paid by the City), the dispute shall be resolved by an independent utilities expert whose decision shall be final. Said expert shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by the Presiding Judge of the San Diego Superior Court acting in his or her individual capacity.

SECTION 22 Conformance with Laws.

(a) Conformance with Laws. Each of the parties, in all of its activities on or in connection with the Center and Parking Facility and in all the uses thereof (including the construction and installation of additions, improvements or alterations, and any replacements of or additions to the FFE) shall abide by and conform to all applicable (i) rules and regulations prescribed by the San Diego Unified Port District Act, (ii) ordinances, policies and general regulations of the District, (iii) general ordinances of the City, (iv) laws of the State of California, and (v) laws of the United States of America, as the same may now exist or may hereafter be enacted, adopted or amended.

SECTION 23 Non-discrimination.

(a) Discrimination for Personal Characteristics. Neither party shall discriminate against any person or class of persons by reason of sex, color, race, age, handicap, religion, national origin, sexual orientation or sexual preference.

(b) Discrimination in Services and Programming. The City shall not unreasonably discriminate in any manner whatsoever as to any person or entity seeking to offer or provide services to the Center or to hire the Center (or any part thereof) for such person's or entity's exhibition, convention or other program.

SECTION 24 Partial Invalidity.

(a) Partial Invalidity. If any term, covenant, condition or provision of this 1997 Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this 1997 Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 25 Hold Harmless.

(a) City's Obligation. The City shall, to the full extent permitted by law, indemnify, protect, hold harmless, save and keep harmless the District and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of or as the result of entering into the Financing Documents, and the acquisition, construction, operation, use, condition, or possession of the Existing Center and Expanded Center and any portion thereof, including:

- (1) any accident in connection with the operation, use, condition or possession of the Existing Center and Expanded Center and any portion thereof, resulting in damage to property or injury to or death to any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the District;
- (2) patent trademark or copyright infringement as a consequence of the operation of the Existing Center and Expanded Center and any portion thereof;
- (3) strict liability in tort as a consequence of the operation of the Existing and Expanded Center and any portion thereof;

(4) except as provided in Paragraph 25(b)(5) and 25(b)(6), any environmental law or regulation as a consequence of the operation of the Existing Center and Expanded Center;

(5) any claim of any nature directly arising from or related to the dewatering system, which claim is based upon the operation of the dewatering system from and after the date on which the City assumes the NPDES permit and operation of the dewatering facility pursuant to section 6(a)(7) herein and the Dewatering MOU; and

(6) except as provided in Paragraph 25(b)(5) and 25(b)(6), the existence, placement, delivery, storage or release of hazardous materials on the Existing Center or Expanded Center or contamination of property, arising therefrom.

The indemnification in this Section excludes any Claim based upon any misstatement or omission, or alleged misstatement or omission, of material fact necessary to make the facts stated, in the context in which they are stated, not misleading, related to materials provided by the District for inclusion in: (i) the Official Statement for any Certificates issued under the above-referenced Financing Documents, or (ii) any Continuing Disclosure pursuant to a Continuing Disclosure Agreement to which the District is a party relating to such Certificates.

(b) The District's Obligation. The District shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the City and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, fines, penalties, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim") arising out of or as the result of the acquisition, construction, installation, operation, use, condition, or possession of the Parking Facility and Tennis Courts and any portion thereof; and to the extent expressly provided in Paragraphs 25(b)(5) and 25(b)(6), relating to the Existing Center and the Expanded Center; including:

(1) any accident in connection with the operation, use, condition or possession of the Parking Facility and Tennis Court and any portion thereof resulting in damage to property or injury to or death to any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the District;

(2) patent trademark or copyright infringement as a consequence of the operation of the Parking Facility and Tennis Court and any portion thereof;

(3) strict liability in tort as a consequence of the operation of the Parking Facility and Tennis Court and any portion thereof;

- (4) any environmental law or regulation or as a consequence of the operation of the Parking Facility and Tennis Court and any portion thereof;
- (5) the existence, placement, delivery, storage or release of hazardous materials on the Existing Center or Expanded Center, or contamination of property arising therefrom, directly caused by the District;
- (6) any claim of any nature directly arising from or related to the dewatering system, which claim is based upon the operation of the dewatering system prior to the date on which the City assumes the NPDES permit and operation of the dewatering facility pursuant to section 6(a)(7) herein and the Dewatering MOU; and
- (7) any Claim based upon any misstatement or omission, or alleged misstatement or omission, of material fact necessary to make the facts stated, in the context in which they are stated, not misleading, related to materials provided by the District for inclusion in: (i) the Official Statement for any Certificates issued under the above-referenced Financing Documents, or (ii) any Continuing Disclosure pursuant to a Continuing Disclosure Agreement to which the District is a party relating to such Certificates.

The indemnification arising under this Section 25 shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination hereof for any reason. The City and the District mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following the learning thereof by such party.

SECTION 26 Successors in Interest.

(a) Successors in Interest. Unless otherwise provided in this 1997 Agreement or the Financing Documents, all provisions hereof shall apply to and bind the heirs, successors, executors, administrators and assigns of each of the parties, all of whom shall be jointly and severally liable hereunder.

(b) Effect on Section 17 and the Financing Documents. Nothing contained in this Section shall be construed to affect the provisions of Section 17 of this 1997 Agreement or the Financing Documents.

SECTION 27 Easements.

(a) Present and Future Easements. This 1997 Agreement and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by the District in, to or over the Center for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, cable television, telegraph, light, heat or power lines as may from time to time

hereafter be determined by the District to be in the best interests of the development of the tidelands.

(b) Location of Easements. The District agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the Center activities and operations of the City.

SECTION 28 Title of the District.

(a) San Diego Unified Port District Act. The District's title to the Center is derived from the provisions of the San Diego Unified Port District Act and is subject to the provisions of said Act. This 1997 Agreement is granted subject to the provisions of said Act.

SECTION 29 Warranties, Guarantees, Covenants.

(a) Warranties, Guarantees, Covenants. The District makes no warranty, guaranty, covenant (including but not limited to covenants of title) or averment of any nature whatsoever concerning the condition of the Center, including the physical condition thereof, or any condition which may affect the Center, and it is agreed that the District will not be responsible for any loss, damage or costs which may be incurred by the City by reason of such condition.

SECTION 30 Quitclaim of the City's Interest Upon Termination.

(a) Quitclaim Deed. Upon the expiration or sooner termination of this 1997 Agreement for any reason, the City shall execute, acknowledge and deliver to the District, within 30 days after receipt of written demand therefor, a good and sufficient quitclaim deed whereby all right, title and interest of the City in the Center is conveyed to the District, provided, however, that the City shall not deliver such quitclaim deed unless the Facility Lease has terminated. Should the City fail or refuse to deliver said deed the District within the time allotted, the District may prepare and record a notice reciting the failure of the City to execute, acknowledge and deliver said deed and said notice shall be conclusive evidence of the termination of this 1997 Agreement and of all right of the City or those claiming under the City in and to the Center.

SECTION 31 Peaceable Surrender.

(a) Surrender. Upon the expiration or sooner termination of this 1997 Agreement, the City shall peaceably surrender (i) the Center to the District in as good a condition as the same is on the Completion Date, ordinary wear, tear and obsolescence excepted, and free of any personal property of the City (not including the FFE, or additions to or replacements of the FFE), (ii) the FFE and replacements of the FFE to the District in as good a condition as the age and use thereof permit. If the City fails to so surrender the City shall defend and indemnify the District from all

liability and expense resulting from the delay or failure to so surrender, including without limitation expense resulting from any succeeding party's claims against the District based upon the City's failure to so surrender.

SECTION 32 Waiver.

(a) Waiver. Any waiver by either party of any breach by the other party of any one or more of the covenants, conditions or agreements of this 1997 Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this 1997 Agreement, nor shall any failure on the part of either party to require or exact full and complete compliance by the other party with any of the covenants, conditions or agreements of this 1997 Agreement be construed as in any manner changing the terms hereof or to prevent either party from enforcing any provision hereof.

SECTION 33 Holding Over.

(a) Holding Over. This 1997 Agreement shall expire without further notice at the expiration of the term. Any hold over by the City after either the expiration or sooner termination of this 1997 Agreement shall not constitute a renewal or extension or give the City any rights in or to the Center. If the City, with the District's written consent, remains in possession of the Center after expiration of termination of this 1997 Agreement, such possession by the City shall be deemed to be a month-to-month basis, terminable on 30 days written notice given at any time by either party to the other party.

(b) Rights During Holding Over. All of the provisions of this 1997 Agreement, except those pertaining to the term hereof, shall apply to said month-to-month holding over.

SECTION 34 Captions.

(a) Captions. The Table of Contents and captions contained herein are for convenience in reference and are not intended to define, limit the scope of or affect any provision hereof.

SECTION 35 Entire Understanding; Amendments.

(a) Entire Agreement. This 1997 Agreement, the Financing Documents and the Dewatering MOU referenced above, contain the entire understanding and agreement between these parties, and the City and the District, by accepting the same, acknowledge that there is no written or oral understanding or agreement between the parties other than those referenced above with respect to the Center. The parties further agree that this 1997 Agreement, the Financing Documents and the Dewatering MOU supersede all prior offers, negotiations, discussions,

agreements and writings of the parties. Each of these parties acknowledges that no party, nor any agent or attorney of any party, has made any promise, representation, waiver or warranty whatsoever, express or implied, which is not expressly contained in this 1997 Agreement, the Financing Documents and the Dewatering MOU, and each party further acknowledges that it has not executed this 1997 Agreement and the Financing Documents in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in this 1997 Agreement, the Financing Documents and the Dewatering MOU.

(b) Amendments. No modification, amendment or alteration of this 1997 Agreement shall be valid unless such modification, amendment or alteration is in writing signed by both parties, provided, however, that the parties shall not modify, amend, or alter the term of this 1997 Agreement unless the Facility Lease has terminated.

SECTION 36 Operating Memorandum.

(a) Operating Memorandum. Notwithstanding the provisions of Section 35 of this 1997 Agreement, the Port Director and the City Manager may, from time to time, enter into a written memorandum concerning the details of the use, operation, administration and promotion of the Center or the Parking Facility; and any such memoranda shall be binding between the parties, provided the same does not contravene any provision of this 1997 Agreement or the Financing Documents.

SECTION 37 Time is of the Essence.

(a) Time is of the Essence. Time is of the essence with respect to each and every term and provision in this 1997 Agreement.

SECTION 38 Attorney's Fees.

(a) Attorney's Fees. In the event any action is commenced by either the City or the District to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to receive from the other party all costs expended by the prevailing party in any such action, together with a reasonable attorney's fee to be fixed by the Court.

SECTION 39 Notices.

(a) Notices. Notices delivered to or to be delivered by the District or the City to the other may be personally served upon the District or the City or any person hereafter authorized in writing to receive such notices on behalf of either party, or may be delivered by certified mail addressed to the appropriate address hereinafter set forth or to such other address as the District

or the City may hereafter designate by written notice to the other party. If delivered by certified mail, delivery of notice will be deemed completed and binding on the other party served 48 hours after deposit of such notice into the United States Mail.

To District

Port Director
San Diego Unified Port District
Post Office Box 488
San Diego, CA 92112

To City

City Manager
City of San Diego
202 C Street
San Diego, CA 92101

SECTION 40 Quiet Possession, Inspection.

(a) Quiet Possession. Subject to the provisions hereof, so long as the City is not in default hereunder, the District shall not interfere with the City's quiet possession and enjoyment of the Center. The City shall not commit any waste or act of nuisance which disturbs the quiet possession and enjoyment of the Parking Facility by the District, nor shall the City or the District commit any waste or act of nuisance which disturbs (1) the public, or (2) any neighbor or tenant of the District.

(b) Mutual Inspection. The District may, at reasonable intervals during normal business hours, inspect the Center. The City may, at reasonable intervals during normal business hours, inspect the Parking Facility.

SECTION 41 Gender and Number.

(a) Gender and Number. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporations, partnerships or other legal entities when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 42 Covenants and Conditions.

(a) Covenants and Conditions. The timely and complete performance by either party of each of its promises and covenants contained herein shall be a condition to such party's continued enjoyment of its rights under this 1997 Agreement.

SECTION 43 Effects on Third Parties.

(a) Effects on Third Parties. Except as provided in the Financing Documents, no obligation of the District set forth in this 1997 Agreement shall constitute a (1) third party contract in favor of any of the District's lessees or (2) waiver by the District of any obligation, in the District's favor, of any such lessee.

SECTION 44 Relationship Between Parties.

(a) Relationship Between the Parties. The relationship of the parties is that of independent contractors and not that of principal and agent, of employer and employee, of landlord and tenant, or of partners.

SECTION 45 Controlling Provisions.

(a) Controlling Provisions. Under no circumstances shall any provisions of this 1997 Agreement be construed or held to be controlling insofar as the provisions of the Financing Documents are concerned, and in the event of any conflict between the provisions of this 1997 Agreement, on the one hand, and the Financing Documents on the other hand, the provisions of the Financing Documents shall govern.

IN WITNESS WHEREOF, this 1997 Agreement is executed by the District, acting by and through the Port Director, pursuant to Ordinance No. _____ of the Board authorizing said execution, and by the City, acting by and through the City Manager, pursuant to Ordinance No. O-_____ of the City Council authorizing said execution.

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Port Director

THE CITY OF SAN DIEGO

By: _____
City Manager

I HEREBY APPROVE the form and legality of the foregoing Agreement, this _____
day of _____, 1997.

Port Attorney

I HEREBY APPROVE the form and legality of the foregoing Agreement, this _____
day of _____, 1997.

CASEY GWINN, City Attorney

By: _____
Deputy City Attorney

EXHIBIT "A"

Description of Real Property (Existing Center)

EXHIBIT "B"

Description of Real Property (Expansion Site)

EXHIBIT "C"

Description of Real Property (Parking Facility)

**1997 CONVENTION CENTER
MANAGEMENT AGREEMENT BY AND BETWEEN
THE SAN DIEGO UNIFIED PORT DISTRICT
AND THE CITY OF SAN DIEGO**

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